

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YVETTE FELARCA, ET AL.,

No. C-11-05719 DMR

Plaintiff(s),

**ORDER RE: JOINT DISCOVERY
LETTER [DOCKET NO. 345]**

v.

ROBERT J. BIRGENEAU, ET AL.,

Defendant(s).

The court has reviewed the arguments between Plaintiffs and the UC Defendants regarding the deliberative process privilege at pages 4-7 of the December 18, 2015 joint discovery letter. [Docket No. 345.] Both sides failed to provide adequate information for the court to be able to analyze the issues.

The parties are ordered immediately to engage in further telephonic or face-to-face meet and confer discussions regarding the documents at issue, bearing in mind the content of this order. If the parties cannot resolve the dispute, they must file a further joint letter by **January 30, 2015**. The letter shall not exceed 8 pages. Defendants shall attach a copy of the privilege log describing the disputed documents. The privilege log must provide adequate information for the viewer to understand the subject matter (for example, is the document relevant to the November 9, 2011 protest? To a different protest?), as well as whether the document constitutes a communication among CMET members as opposed to other people. If Plaintiffs assert that they are entitled to

1 documents that do not relate to the November 9, 2011 protest or do not involve CMET member
2 communications, Plaintiffs must articulate the relevance of those documents. Defendants must
3 establish that each document asserted to be privileged is both predecisional (identifying the final
4 decision as well as its date), and deliberative. Plaintiffs shall make specific arguments regarding any
5 challenged document (i.e., explain why that document is not predecisional and/or deliberative). The
6 parties shall also address the factors that the court considers in determining whether the qualified
7 privilege should be overcome. *See, e.g., FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1161
8 (9th Cir. 1984).

9 The hearing previously scheduled for January 29, 2015 will be held as scheduled. The court
10 will address all disputes set forth in Docket No. 345 other than those relating to the deliberative
11 process privilege.

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14 IT IS SO ORDERED.

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16 Dated: January 23, 2015

